

The Transfer Of Property Act 1882



THE TRANSFER OF PROPERTY ACT, 1882
(4 OF 1882)
[17TH FEBRUARY 1882]

An Act to amend the law relating to the Transfer of Property by act of Parties

Preamble – WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; it is hereby enacted as follows: -

Chapter I Preliminary

1. Short title - This Act may be called the Transfer of Property Act, 1882.

Commencement - It shall come into force on the first day of July, 1882.

Extent - ¹[It extends² in the first instance to the whole of India except ³[the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of] Bombay, Punjab and Delhi.]

The Act has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), sec. 2, and continued in force, with modifications, in the territory transferred to Delhi Province by the Delhi Laws Act, 1915 (7 of 1915), sec. 3 and Sch. III. It has also been partially extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

The Act has been extended with effect from 1st January, 1893, to the whole of the territories, other than the Scheduled Districts, under the administration of the Govt. of Bombay.

Sections 54, 107 and 123 have been extended from 6th May, 1935, to all Municipalities in the Punjab and to all notified areas declared and notified under sec. 241 of the Punjab Municipal Act, 1911 (Pun. 3 of 1911), see Punjab Gazette, Extra., 1925, p. 27. Those sections and section 129 have been extended to certain areas in Delhi Province, see Notifications No. 198/38-III, dated 30th May, 1939, Gazette of India, 1939, Pt. I, p. 918, and No. 61/40-Judl., dated 16th November, 1940, Gazette of India, 1940, Pt. I, p. 1639, respectively.

The Act has been extended to Manipur by the Union Territories (Laws) Amendment Act, 1956 (68 of 1956).

It has been rep. as to Government Grants by the Government Grants Act, 1895 (15 of 1895) and rep. or modified to the extent necessary to give effect to the provisions of the Madras City Tenants Protection Act, 1921 (Mad. 3 of 1921) in the City of Madras; see sec. 13 of that Act.

It has been amended in Bombay by Bombay Act 14 of 1939, and in Uttar Pradesh by Uttar Pradesh Act 24 of 1954.

It has been extended to Pondicherry by Act 26 of 1968, sec. 3, Sch., Part I

¹ Subs. by the A..O. 1950, for the original third paragraph.

² The application of this Act was barred in the Naga Hills District, including the Mokokchang Sub-Division, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills and the Mikir Hills Tract, by notification under sec. 2 of the Assam Frontier Tracts Regulation, 1880 (2 of 1880).

³ Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "Part B States".

⁴[But this Act or any part thereof may be notification in the Official Gazette be extended to whole or any part of the ⁵[said territories] by the ⁶[State] Government concerned.]

⁷[And any State Government may ⁸[***] from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely: -

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

⁹[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, ¹⁰[1908], (16 of 1908) under the power conferred by the first section of that Act or otherwise.]

2. Repeal of Acts - Saving of certain enactments, incidents, rights, liabilities, etc.

In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect -

- (a) the provisions of any enactment not hereby expressly repealed;
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction;

and nothing in the second Chapter of this Act shall be deemed to affect any rule of ¹¹[***] Muhammadan ¹²[***] law.

3. Interpretation clause - In this Act, unless there is something repugnant in the subject or context, -

“immoveable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

⁴ Subs. by the A.O. 1937, for the original para.

⁵ Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "said States".

⁶ Subs. by the A.O. 1950, for "Provincial".

⁷ Subs. by Act 3 of 1885, sec. 1, for the original para.

⁸ The words "with the previous sanction of the Governor General in Council" omitted by Act 38 of 1928, sec. 2 and Sch. I.

⁹ Added by Act 3 of 1885, sec. 2 (with retrospective effect). Section 54, paras. 2 and 3, and sections 59, 107 and 123 extend to every cantonment-see sec. 287 of the Cantonments Act, 1924 (2 of 1924).

¹⁰ Subs. by Act 20 of 1920, sec. 2, for "1877".

¹¹ The word "Hindu" omitted by Act 20 of 1929, sec. 3.

¹² The words "or Buddhist" omitted by Act 20 of 1929, sec. 3.

¹³“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:]

“registered” means registered in ¹⁴[¹⁵[any part of the territories] to which this Act extends] under the law¹⁶ for the time being in force regulating the registration of documents:

“attached to the earth” means -

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

¹⁷“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;]

¹⁸“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I - Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that -

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,
- (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

¹³ Ins. by Act 27 of 1926, sec. 2, as amended by Act 10 of 1927, sec. 2 and Sch. I.

¹⁴ Subs. by Act 3 of 1951, sec. 3 and Sch., for "a Part A State or a Part C State" (w.e.f. 1-4-1951).

¹⁵ Subs. by the Adaptation of Laws (No. 2) Order, 1956, for "any State".

¹⁶ See the Indian Registration Act, 1908 (16 of 1908).

¹⁷ Ins. By Act 2 of 1900, sec. 2.

¹⁸ Subs. by Act 20 of 1929, sec. 4 as amended by Act 5 of 1930, sec. 2 for the original paragraph.

- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II - Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III - A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

4. Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act

The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872).

¹⁹[And sections 54, paragraphs 2 and 3, sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, ²⁰[1908 (16 of 1908)].]

¹⁹ Added by Act 3 of 1885, sec. 3.

²⁰ Subs. by Act 20 of 1929, sec. 5, for "1877".

Chapter II¹ Of Transfers of Property by Act of Parties

(A) *Transfer of Property, whether moveable or immoveable*

5. “Transfer of property” defined

In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, ²[or to himself] and one or more other living persons; and “to transfer property” is to perform such act.

²[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

6. What may be transferred

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force, -

- (a) The chance of an heir-apparent succeeding to an estate, the chance of relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.
- (b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.
- (c) An easement cannot be transferred apart from the dominant heritage.
- (d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- ³[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]
- (e) A mere right to sue ⁴[***] cannot be transferred.
- (f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- (g) Stipends allowed to military ⁵[naval], ⁶[air-force] and civil pensioners of ⁷[Government] and political pensions cannot be transferred.
- (h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) ⁸[for an unlawful object or consideration within the meaning of

¹ Nothing in Chapter II is to be deemed to affect any rule of Muhammadan Law, see section 2, Act 20 of 1929.

² Ins. by Act 20 of 1929, sec. 6.

³ Ins. By Act 20 of 1929, sec. 6.

⁴ The words “for compensation for a fraud or for harm illegally caused” omitted by Act 2 of 1900, sec. 3.

⁵ Ins. by Act 35 of 1934, sec. 2 and Sch.

⁶ Ins. by Act 10 of 1927, sec. 2 and Sch. I.

⁷ The word "Government" successively subs. by the A.O. 1937 and the A.O. 1950 to read as above.

⁸ Subs. by Act 2 of 1900, sec. 3, for "for an illegal purpose".

section 23 of the Indian Contract Act, 1872 (9 of 1872)], or (3) to a person legally disqualified to be transferee.

⁹[(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

7. Persons competent to transfer

Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

8. Operation of transfer

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer

A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

⁹ Added by Act 3 of 1885, sec. 4.

11. Restriction repugnant to interest created

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

¹⁰[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

12. Condition making interest determinable on insolvency or attempted alienation

Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person

Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. Rule against perpetuity

No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to class some of whom come under sections 13 and 14

If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails ¹¹[in regard to those persons only and not in regard to the whole class].

¹⁰ subs. by Act 20 of 1929, sec. 8, for the original paragraph.

¹¹ Subs. by Act 20 of 1929, sec. 9, for "as regards the whole class".

¹²[16. Transfer to take effect on failure of prior interest

Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

17. Direction for accumulation

(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than -

- (a) the life of the transferor, or
- (b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of-

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public

The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.]

19. Vested interest

Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation - An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income

¹² Subs. by Act 20 of 1929, sec. 10, for the original sections 16 to 18.

arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit

Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest

Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception - Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age

Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

23. Transfer contingent on happening of specified uncertain event

Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified

Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

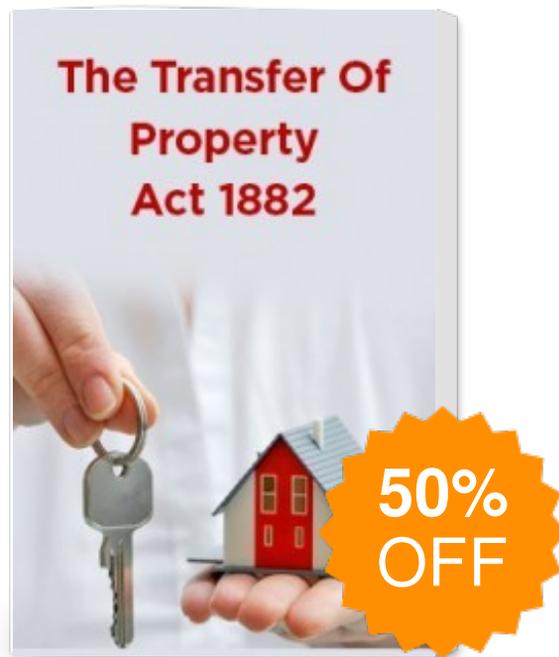
Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. Conditional transfer

An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies

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